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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.12 OF 2002

Dada Nivrutti Tikote
r/o. Police Lane, Aundh
Pune, Dist.:Pune ... Appellant

V/s.

State of Maharashtra
through Daund Police Station
for Bhimrao Sopana Pawar
r/o. Khanota, Tal.:Daund,
Dist.: Pune ... Respondent

Mr.S.S. Kulkarni for Appellant
Dr.F.R. Shaikh, APP, for Respondent

CORAM: **V.G. PALSHIKAR, Ag. C.J. & SMT.NISHITA MHATRE, J.**

DATED: **SEPTEMBER 13, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The present appeal is one more case where the investigating agencies' lackadaisical attitude is brought to the fore. Despite the scientific advances made for detection of crimes the police have chosen not to avail of the facilities available. The sheer callousness and carelessnes with which investigations are undertaken lead us to believe that there is a definite design on the part of investigation agencies to favour the accused who was a police constable. The slipshod investigation in this case leaves us with no other alternative but to acquit the appellant.

2. The prosecution case is that the appellant

fatally assaulted his wife Pushpa on 7.12.2000 at about 10 am. He allegedly committed the crime in his cousin, Janardhan's house by inflicting an injury on her head with a pickaxe. The appellant was arrested on the same day and charged for having committed an offence punishable under section 302 of the Indian Penal Code. The case was committed to Sessions where the appellant was convicted and sentenced to life imprisonment.

3. The prosecution has relied on six witnesses. Jaibai i.e., PW2 had made a statement before the Police that she had witnessed the crime. However, she retracted her statement in Court and was declared hostile. She denied having made a statement before the Police that, when she heard a cry from Pushpa who was in the other room with the appellant, she and the appellant's mother Taibai rushed to that room and saw the pickaxe in the appellant's hand and the victim lying in a pool of blood.

4. PW1 is the complainant who claims to have been informed of the incident at about 11.15am by one Dattatraya Shivaji Parkale. He then went to Janardhan's house where he found one woman lying dead and other women crying. He has stated that Jaibai i.e., PW2 informed him that the appellant had fatally assaulted his wife. He and the other villagers produced the appellant before the police and lodged a complaint

against him. The defence has put several suggestions to him regarding his enmity with Janardhan. He has admitted that he was not an eye witness to the incident and knew nothing about the incident except what Jaibai had told him.

5. PW3 is the panch witness who has deposed to the seizure panchanama. The blood stained articles including the pickaxe were seized from the house of Janardhan. This witness has admitted that Janardhan had balanced the pickaxe and other implements or two wooden logs in a room which was about 6 feet in height.

6. The next witness examined for the prosecution is the nephew of the victim. He has deposed that there were frequent quarrels between the victim and the appellant who was a police constable. He has deposed that he and other members of his family rushed to Janardhan’s house when they learnt of the death of Pushpa, telephonically. PW5 is the Medical Officer who conducted the postmortem examination on the victim. He has deposed regarding the injuries suffered by the victim and has stated that they could not have been caused by a pickaxe falling from a height of 5 to 6 feet. Lastly, the prosecution has examined the Investigating Officer. Significantly, the Investigating Officer has not bothered at all to have the blood stains on the article seized, analysed. All that was sent to

the Chemical Analyser was the viscera from the dead body. Neither has he bothered to have the finger printing done nor he thought it essential to have the blood stains found on the articles and clothing seized, analysed. The blood of the victim and of the deceased has not been grouped. In such circumstances, it is impossible to link the appellant to the crime.

7. Furthermore, PW2 who the prosecution claims is an eye witness has turned hostile. We wonder whether this is so because the appellant was employed in the police department. With this slipshod investigation and complete lack of evidence, we have no alternative but to acquit the appellant. Although, the Doctor has opined that the injury sustained by the victim could not have occurred due to a pickaxe falling on the victim’s head from a height of about 5 to 6 feet, we are unable to accept the case of the prosecution that it was the appellant who has committed the crime. There is no evidence whatsoever on record to draw this inference.

8. Appeal is, therefore, allowed. The appellant be set free forthwith, if not otherwise required in law.